The defendants accepted all the terms and conditions by signing an endorsement at the foot of the letter. This endorsement reads as follows:—

"I accept the appointment and undertake to adhere strictly to the terms and conditions thereof."

Counsel for the defendants has submitted that it is essential for the court to decide whether paragraph 3 contains a guarantee or an indemnity because he contends that on the pleadings and the agreed issues before the learned trial judge the defendants must succeed if paragraph 3 contains an indemnity. In our view, whether it is a guarantee or an indemnity is not relevant. What is relevant and has to be decided is whether there was consideration for the giving of the guarantee or indemnity.

On the question whether there was consideration, it is necessary to consider whether any detriment was suffered by the plaintiffs or any benefit accrued to the defendants. It is clear that on the one hand, detriment was suffered by the plaintiffs in that they have to keep the insured covered against risks for a period which may be as long as 90 days without receiving anything by way of premium. There was also a contingent liability on the part of the plaintiffs to meet claims on policies in respect of which no premiums have yet been received by them. On the other hand, there was a benefit to the defendants in having the authority to allow credit for a period which may be as long as 90 days, and also in being able thereby to increase the volume of insurance business transacted by them. In our opinion, it is clear that there was consideration for the giving of the guarantee or indemnity by the defendants to the plaintiffs.

Counsel for the defendants has pointed out that the plaintiffs have not alleged in their statement of claim that the defendants gave an indemnity to the plaintiffs. In considering this point, it must be remembered that what we have to decide is essentially a question of law, the question being, as we have stated, whether there was consideration for the giving of the guarantee or indemnity. In the particular circumstances of this case we are of the view that the pleadings and the letter dated the 14th March 1964 contain sufficient material to enable us to decide the matter and that no amendment of the statement of claim is necessary.

In the result the appeal is allowed with costs here and below. There will be an order for the necessary accounts and inquiries to be taken by the registrar.

Appeal allowed.

Solicitors: *Drew & Napier; J.B. Jeyaretnam & Co.*

ONG SIM MOY & ORS. v. ONG SIM HOE

[O.C.J. (Winslow J.) December, 13, 1968]
[Singapore — Suit No. 1526 of 1966]

Negligence — Highway — Accident — Road junction — Collision between vehicles at junction where one vehicle emerges from a minor road into the path of traffic coming from its right on a major road — "Halt" sign at junction — Duty to stop at junction and allow vehicle on major road to pass.

The facts in this case were that the deceastd cyclist was killed in an accident which occurred at the junction of Jalan Kayu and Yio Chu Kang Road. There was a "halt" sign at the mouth of Jalan Kayu. The defendant was driving a lorry along Yio Chu Kang Road and collided with the bicycle.

Held: in the circumstances, the deceased cyclist was clearly to blame for the accident even assuming that he previously stopped at the "halt" line, for the cyclist should have seen the lorry approaching from his right and waited a little longer to ensure that the major road was safe to turn into before he proceeded to turn right.

Cases referred to:—

(1) *Lang* v. *London Transport Executive & Anor.* [1959] 3 All E.R. 609.

(2) *Brooks* v. *Graham & Barrington* (1964), English Court of Appeal Case (unreported).

(3) *Mohamed Repin* v. *Lim Yu Kee*, *ante* p. 64.

CIVIL SUIT.

N.A. Christopher for the plaintiffs.

G. Abisheganaden for the defendant.

Cur. Adv. Vult.

Winslow J.: For the purposes of this case I have made a careful examination of the authorities on the subject of collisions between vehicles at junctions where one vehicle emerges from a minor road into the path of traffic coming from its right on a major road. In the case of *Lang* v. *London Transport Executive & Anor.*[1] a motor cyclist emerged from a minor side road on to a major road and collided at the junction of the two roads with an omnibus travelling along the major road. There was a traffic sign 180 feet from the mouth of the side road indicating *"Slow. Major Road Ahead"*. The motor cyclist was killed and it was held that, although the cyclist was highly negligent, the bus driver was nevertheless one-third to blame because the possibility of danger was reasonably apparent and the bus driver had not taken the precaution of looking at the traffic in the side road to see whether the deceased was still moving at 20 m.p.h. but obviously intending to cross or whether he was slowing down and going to wait for traffic in the major road.

In the present case, however, I have to deal not with a *"Slow"* sign but a *"Halt"* sign indicating a major road ahead. As Lord Justice Willmer said in the case of *Brooks* v. *Graham and Berrington*[2] (a 1964 English Court of Appeal Case which is unreported) but whose judgment was referred to by Chua J. in *Mohamed Repin* v. *Lim Yu Kee*:—[3]

"It seems to me that, when one is dealing with a cross-road subject to a Halt sign, wholly different considerations apply. If a vehicle on the major road is to approach such a cross-road in such a way that it can stop dead if a vehicle on the minor road fails to observe the Halt sign, it would mean that it would have to slow down to little more than walking pace. That would have the effect for all practical purposes of bringing traffic on the major road to a standstill. That, as I said earlier, would represent a wholly unrealistic view of the requirements of present day traffic conditions."

Chua J. held that:—

"Even accepting the story of the 1st defendant to be true that he stopped at the Halt line, nevertheless, he was to blame for the accident as he should have stopped there a bit longer to allow the bus, which was travelling on a major road and coming from his right, to pass before attempting to cross the junction. Instead of doing that he took a risk and crossed the junction in the face of the oncoming bus."

In the case before me there were unfortunately no eye witnesses who could be called on behalf of the plaintiffs who are the dependants of a cyclist who was killed in the accident which occurred at about 8 p.m. on 15th March, 1966 at the junction of Jalan Kayu and Yio Chu Kang Road. There was a *"Halt"* sign at the mouth of Jalan Kayu. On the question of liability, the plaintiffs submitted a true extract of the notes recorded by the coroner on 21st June, 1966 of the evidence of the defendant, Ong Sim Hoe, and it was contended on behalf of the plaintiffs by their counsel that this extract established a case of sole negligence on the part of the defendant. According to his evidence before the coroner the defendant was driving his motor lorry No. SGA. 559 along Yio Chu Kang Road at slightly more than 20 m.p.h. in the direction of Upper Serangoon Road. He saw a bicycle coming out of Jalan Kayu (which was to his left) and turning right into Yio Chu Kang Road, when he first saw the cyclist, he was already in Yio Chu Kang Road and 20 feet in front of his lorry. He applied his brakes and swerved to his right and the collision happened before he swerved to his right. He gave varying distances ranging from 3 to 8 feet as being the distance that his lorry was from the left hand edge of the road. According to the sketch plan (AB1) his lorry left a brake mark *QR* which was 29 feet 8 inches long. The commencement of the brake mark at *Q* is 10 feet 2 inches from the left hand edge of the road whereas the road itself is 21 feet 8 inches wide. *QR* takes a swerve towards the right hand side of the road. In his evidence before me the defendant told more or less the same story. Neither before the coroner nor before me was he able to say whether the cyclist had halted at the *"Halt"* line. The road was otherwise clear of traffic. In his evidence before me he said, however, that he swerved right before the collision although he had told the coroner that the collision happened before he could swerve. He added that the accident happened before he could swerve completely to his right. He also said that he kept a proper look out ahead of him but that his vision could cover the left and the right in front of him. The damage to the vehicles as agreed makes it quite clear that the front portion of the bicycle ran into the nearside front mudguard of the lorry. There was no damage to the front bumper which rather suggests that the front wheel of the bicycle ran into the space behind the bumper and hit the front nearside mudguard. One feels considerable sympathy towards the plaintiffs having particular regard to that portion of the judgment of Havers J. at page 612 of the *Lang* case, to which I have previously referred, which counsel reiterated as follows:—

"One is always reluctant to find negligence against a man who has died and who has not had the opportunity to go into the witness-box and give his evidence before the court."

Taking all the matters before me into account, however, it seems to me that the cyclist was wholly to blame even assuming that he had previously stopped at the *"Halt"* line. It was contended on his behalf that the defendant should have seen him inside Jalan Kayu and proceeded with caution accordingly so as to avoid a collision. I am of the view that this argument can also be advanced with even greater force the other way, namely, that the cyclist should have seen the lorry approaching from his right and waited a little longer in order to ensure that the major road was safe to turn into before he proceeded to turn right. Following the reasoning of Chua J. in the case of *Mohamed Repin,* to which I have referred earlier, the cyclist should have stopped a little longer at the *"Halt"* line before attempting to turn into Yio Chu Kang Road. Instead of doing that he took a risk and crossed in the face of the oncoming lorry which I find was travelling at a moderate speed on a major highway. In my view, the defendant did all he could, in the circumstances, to avoid a collision by applying his brakes and swerving to his right and the damage shows fairly clearly that the cyclist ran into the front offside mudguard of the lorry. This is supported by the direction of the brake mark *QR* which, even if it were made by the nearside tyres of the lorry, commenced on the defendant's side of the road. There was no other traffic and it is difficult to see what other avoiding action the defendant could have taken at the junction, lit only by one street lamp as it was, short of literally crawling along at walking pace in order to ensure that no foolhardy or reckless person would come shooting out of Jalan Kayu into his path with a view to crossing in front of the lorry rather than behind it. Counsel for the plaintiffs sought to impose a heavier duty of care on the defendant than on the deceased mainly on the ground that the deceased was only a cyclist whereas the defendant was in charge of a lethal weapon like a lorry. That may well be so but I am quite satisfied that the cyclist was turning right into Yio Chu Kang Road when

it was absolutely unsafe to do so, if not extremely dangerous. In the face of the authorities I find myself unable to allow my sympathies with the plaintiffs on their bereavement and their consequential loss of a bread-winner to decide, following *Lang's* case, that the possibility of danger was so apparent as to necessitate a finding of even a slight degree of negligence on the part of the defendant. In *Lang's* case the accident took place in broad daylight. Moreover, there was only a *"Slow"* sign at the junction and not a *"Halt"* sign. Further the bus driver saw some traffic to his left and the sudden appearance of the motor cyclist was not entirely unexpected.

There was nothing before me to show that the defendant had not had an unblemished career as a lorry driver hitherto. He has been driving along that route for more than 10 years. If I were to find some degree of negligence on the defendant's part in this case on the evidence adduced, I would be driven to a situation where I should have to find almost every defendant guilty of some negligence whether or not he was, in fact, negligent just because somebody had been injured or killed in a collision. I therefore regret that the plaintiff's claim must be dismissed with costs.

Claim dismissed.

Solicitors: *N.A. Christopher; Abishega-Naden & Co.*

PUBLIC PROSECUTOR v. LIM SWEE GUAN

[A.Cr.J. (Ong Hock Sim J.) January 4, 1969]
[Penang — Criminal Appeals Nos. 18 and 19 of 1968]

Criminal Law and Procedure — Trial — Sentence — Adequacy of — Criminal Procedure Code (Cap. 21), ss. 302 and 310.

Penal Code, s. 408 — Criminal breach of trust by servant — Bank cashier — Principles in assessment of sentences.

In this case the deputy public prosecutor appealed against the sentence imposed on the respondent. The respondent pleaded guilty to criminal breaches of trust of moneys belonging to a bank, of which he was the chief cashier. The total amount involved was $165,000. The president of the sessions court sentenced him to one year's imprisonment on each of the three charges. The sentences to run concurrently.

Held, allowing the appeal: in the circumstances the sentences were inadequate and should be enhanced to 1½ years on each charge, the sentences to run consecutively, a total of 4½ years.

Cases referred to:—

(1) *R.* v. *Ball* (1951), 35 Cr.App. R. 164.

(2) *R.* v. *Tuttle* (1929), 21 Cr.App. R. 85, 92. 93.

(3) *R.* v. *Mason & R.* v. *Soper* (1908), 1 Cr.App. R. 73.

(4) *R.* v. *Coleman* (1967), 51 Cr.App. R. 244.

MAGISTRATE'S CRIMINAL APPEAL.

Haji Suhaimi bin Dato' Haji Kamaruddin (Deputy Public Prosecutor) for the appellant.

Triptipal Singh for the respondent.

Ong Hock Sim J. (delivering oral judgment): These two appeals by the learned deputy public prosecutor are against the sentences passed by the learned president, Sessions Court, Penang, on the respondent who was charged in two cases upon the following:—

Case No. Pg. 112/68

(1) That you on 18.11.67 at the United Malayan Banking Corporation Ltd., Beach Street, Penang, in the District of George Town, in the State of Penang, being a servant in the employment of the said United Malayan Banking Corporation Ltd., and in such manner entrusted with certain property, to wit, cash $20,000 committed criminal breach of trust in respect of that property and thereby committed an offence punishable under section 408 of the Penal Code.

(2) That you on 20.11.67 at the United Malayan Banking Corporation Ltd., Beach Street, Penang, in the District of George Town, in the State of Penang, being a servant in the employment of the said United Malayan Banking Corporation Ltd., and in such manner entrusted with certain property, to wit, cash $41,000 committed criminal breach of trust in respect of that property and thereby committed an offence punishable under section 408 of the Penal Code.

Case No. Pg. 116/68

(1) That you between 10.11.66 and 13.10.67 at the United Malayan Banking Corporation Ltd., Beach Street, Penang, in the District of George Town, in the State of Penang, being a servant in the employment of the said United Malayan Banking Corporation Ltd., and in such manner entrusted with certain property, to wit, cash $104,000 committed criminal breach of trust in respect of that property and thereby committed an offence punishable under section 408 of the Penal Code.

The respondent pleaded guilty to the charges in both cases and was duly convicted and sentenced in case Pg. 112/68 to one year's imprisonment on the first charge and also to one year's imprisonment on the second charge, the sentences to run concurrently and in case Pg. 116/68 to one year's imprisonment to run concurrently with the sentences passed in case Pg. 112/68.

The principles which govern appeals against sentence are too familiar but could bear repeating and I therefore quote the words of Hilbery J. in the case of *R.* v. *Ball*:—(1)

"It appears to us appropriate that we should restate the principles which must guide a court in deciding what is the right sentence to pass on a prisoner. In the first place, this court does not alter a sentence which is the subject of an appeal merely because the members of the court might have passed a different sentence. The trial judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that this court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this court that when it was passed there was a failure to apply the right principles, then this court will intervene.